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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,319	02/05/2002	Alan F. Savicki	492.216	3711

7590 01/13/2004

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EXAMINER

BRITTAINE, JAMES R

ART UNIT	PAPER NUMBER
	3677

DATE MAILED: 01/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/049,319	SAVICKI, ALAN F.
Examiner	Art Unit	
James R. Brittain	3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 21 October 2003.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-17 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-17 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a)  The translation of the foreign language provisional application has been received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6)  Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 21, 2003 has been entered.

### ***Claim Objections***

Claims 3-8 are objected to because of the following informalities: The term “the first flange portion” in each claim lacks clear antecedent basis since it can refer to either the “upper” or “altered” flange of claim 1. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 13, 14, 16, and 17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Stolmeier et al. (US 5871281).

Stolmeier et al. (US 5871281) (Figures 3-7) teach closure device, comprising: first and second interlocking fastening strips arranged to be interlocked over a predetermined X axis between first and second ends by arrowhead profile elements, the fastening strips being secured together at the first and second ends; a slider 21 shown in figures 6 and 7 as slidably disposed on

the fastening strips for movement between the first and second ends, the slider facilitating occlusion of the fastening strips when moved towards the first end, the slider including a separator 34 between sidewalls for facilitating the deocclusion of the fastening strips when the slider is moved towards the second end; and the first and second fastening strips include first flange and second flange portions which extend inwardly toward the opposite fastening strip; and first and second altered flange portions defined by the notches 37, 38 near the ends of the first and second fastening strips that receive the separator 34. Stolmeier et al. (US 5871281) also disclose that the tab can be molded or separately attached such as to project downward into the notch or even into the space between the complementary rib and groove 18P and 19G as shown in figures 6 and 7 (col. 4, lines 38-42). The notch exists in the second length of the first upper flange and while the notch also exists in the first length of the first upper flange, the first upper flange is not required by the claim language to be of constant length over the fastening strip. As to claims 5-8 and 10, the method steps of “flattening” and “removing” don’t create a finished article of a different structure than that shown by Stolmeier et al. (US 5871281) and the device of Stolmeier et al. (US 5871281) is fully capable of having the final product structure created by a flattening or removal of material. Applicant has shown no characteristic from these processes that would create a different product from that taught by Stolmeier et al. (US 5871281).

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stolmeier et al. (US 5874281) in view of Porchia et al. (US 5664299).

Stolmeier et al. (Figures 3-7) teach closure device, comprising: first and second interlocking fastening strips arranged to be interlocked over a predetermined X axis between first and second ends, the fastening strips being secured together at the first and second ends; a slider 21 slidably disposed on the fastening strips for movement between the first and second ends, the slider facilitating occlusion of the fastening strips when moved towards the first end, the slider including a separator 34 for facilitating the deocclusion of the fastening strips when the slider is moved towards the second end; and the first fastening strip includes a first flange portion which extends inward toward the second fastening strip, a first altered flange portion defined by the notches 37, 38 near the first end of the first fastening strip that receive the separator 34. The differences are that the closure elements are not both U-channel elements. However, Porchia et al. (Figures 1, 2) teaches that it is conventional to utilize interengaging U-channel elements 16, 17 so as to better secure the fastening strips together. It would have been obvious to modify the closure device of Stolmeier et al. so that the closure elements are both U-channel elements in view of Porchia et al. (Figures 1, 2) teaching that it is conventional to utilize interengaging U-channel elements 16, 17 so as to better secure the fastening strips together.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stolmeier et al. (US 5874281) in view of Herrington (US 5007143).

Stolmeier et al. (Figures 3-7) teach closure device, comprising: first and second interlocking fastening strips arranged to be interlocked over a predetermined X axis between first and second ends, the fastening strips being secured together at the first and second ends; a slider

21 slidably disposed on the fastening strips for movement between the first and second ends, the slider facilitating occlusion of the fastening strips when moved towards the first end, the slider including a separator 34 for facilitating the deocclusion of the fastening strips when the slider is moved towards the second end; and the first fastening strip includes a first flange portion which extends inward toward the second fastening strip, a first altered flange portion defined by the notches 37, 38 near the first end of the first fastening strip that receive the separator 34. The difference is that the closure elements are not rolling action type fastening strips. However, Herrington (Figures 4-7) teaches that it is conventional to utilize interengaging rolling action type elements 16, 17 so as to better secure the fastening strips together. It would have been obvious to modify the closure device of Stolmeier et al. so that the closure elements are rolling action type elements in view of Porchia et al. (Figures 4-7) teaching that it is conventional to utilize rolling action type elements 16, 17 so as to better secure the fastening strips together.

***Response to Arguments***

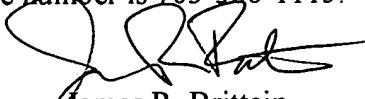
Applicant's arguments filed October 21, 2003 have been fully considered but they are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the altered flanges of Stolmeier are structurally and functionally different) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). An altered flange is a very broad limitation that can be interpreted to describe precisely what Stolmeier teaches and the function of the altered flange of Stolmeier inherently provides the function claimed.

Art Unit: 3677

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is 703-308-2222. The examiner can normally be reached on M, W & F 5:30-1:30, T 5:30-2:00 & TH 5:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



James R. Brittain  
Primary Examiner  
Art Unit 3677

JRB